

## **DOCUMENT H**

### **EXHIBITS**

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**EXHIBIT A**

**SCOPE OF WORK AND SPECIFICATIONS**

**ALPHA RIDGE WASTE HEAT RECOVERY C-0299**

The "Project" means the completely operational waste heat recovery system at the Alpha Ridge Landfill, which shall be designed, engineered, permitted, procured, constructed, started-up, tested, commissioned, and other related services by Contractor in accordance with this Agreement. Despite any omissions, the Scope of Work for the Project consists of all work necessary to complete the Project.

The Scope of Work and Specifications are as follows:

1. This Project will replace the annual consumption of approximately 6,000 gallons of heating oil used to heat the bays in the Maintenance Building with a renewable energy source of waste heat recovered from a landfill gas to energy (LFGTE) facility. As an option, the County is also requesting pricing to replace the heating and/or cooling of in the offices, meeting rooms, bathrooms and storage space, currently provided by heat pump. To meet the objectives the following activities are planned: 1) design and installation of a waste heat recovery system on LFGTE facility (currently under design and construction); and 2) design and installation of supply and return pipelines from LFGTE facility (currently under design and construction) to maintenance shop; and 3) design and installation of radiant or forced draft heaters to heat the service bays including electrical, mechanical and plumbing connections, and 4) design and installation of radiant or forced draft heaters and/or chillers to heat and/or cool the offices, and storage rooms in the maintenance shop including electrical, mechanical and plumbing connections. This project will be funded through a combination of funds from the EECBG grant and leveraged funds from Howard County.
2. The waste heat recovery system will be connected to one (1) containerized Jenbacher J320 engine/generator set. The Contractor for this Project shall be required to closely coordinate all work with the Contractor of the LFGTE facility (currently under design and construction).
3. The project requires the installation of approximately 3,000 feet of insulated hot water supply pipe and 3,000 feet of return pipe to transmit the heat from the new waste heat recovery system to the maintenance shop where it would be utilized by the forced draft heaters as a renewable energy source. Expansion loops and anchors shall also be installed. An unused and existing 4 inch recycle line (see Sheets 6, 8, and 22 of 25 by EA Engineering, June 1990) is available for use as a conduit for the supply and return pipelines to minimize the trenching required. Contractor and the County shall investigate the feasibility of its reuse. Discount for use of the recycle line shall be indicated as an alternate on the price proposal. Any trench that is required shall be bedded and backfilled.
4. Any ground that is disturbed shall be repaved or reseeded to match the existing ground cover.

5. Zero to minimal wastewater or solid waste would be generated during the construction of the proposed project. Any solid waste generated for this Project would be disposed of at the Alpha Ridge Landfill facility.
6. The Project involves modifications to an existing building, the maintenance building, on-site at Alpha Ridge Landfill. Drawings from the construction of the maintenance building have been provided (see Sheets 11, 22, 23, 24, 25, 26, 29, and 32 of 32 by Harrington, Lacey and Associates, March 1979). The Contractor shall make necessary modifications to the structural, electrical, and mechanical (HVAC and plumbing) systems of the maintenance building to replace the current heating system. Programmable thermostats to control the temperature settings shall be included. The components of the current heating system shall be left in place so that if and when the LFGTE facility is shut off temporarily or permanently, the maintenance building will still be able to be heated.
7. As an alternate item in the price proposal, the Contractor shall provide the incremental cost to convert the heat recovery system to an energy recovery system so that both the current heating and cooling systems of the maintenance building could be replaced with renewable energy sources.
8. On behalf of the County, Weston Solutions conducted an asbestos exposure assessment in January 2004 which focused on personal and ambient air sampling at six of the County vehicle maintenance shops, including the maintenance building at Alpha Ridge Landfill. A limited number of bulk samples were taken as part of this assessment. The activities and findings of the assessment were summarized in a report dated January 20, 2004.

In the report, Weston indicated that less than one percent asbestos was found in the vermiculite wall insulation. This was the only bulk sample of the maintenance building taken during that assessment.

9. If an exhaust gas recovery system is proposed, Contractor shall ensure that exhaust gas from the LFGTE facility is treated to meet the waste heat recovery system manufacturer specifications before entering the waste heat recovery system.
10. The waste heat recovery system will include but not be limited to the following components, end suction pumps, air control system (expansion tank, air separator, automatic air vent, pressure reducing valve for makeup water, and pressure relief, valve), hot water unit heaters, Schedule 40 carbon steel insulated above ground piping, and heat transfer fluid. Joints for the above ground piping will be threaded and the fittings shall be threaded malleable iron.
11. Power to satisfy the heat recovery system, if needed, will be supplied from the electricity generated by the landfill gas to energy system at 480 V.
12. Contractor shall implement noise reduction measures, including but not limited to silencers, as are required to meet noise level requirements under applicable Laws for adjoining properties. The LFGTE facility (currently under design and construction) will include noise reduction measures such as directionalizing structures. Contractor for this Project shall coordinate with the Contractor of the LFGTE facility to ensure that noise reduction efforts are not duplicated. The closest property line to the blower/flare station

is approximately 160 feet to the east. A topographical survey of the Landfill will be provided to the Contractor in AutoCAD format.

13. Contractor will design and construct the Project to operate for 24 hours per day, 7 days a week throughout the year including weekends and holidays. The County will operate the system at the turnover of the project.
14. The LFGTE facility (currently under design and construction) will include a supervisory control and data acquisition (SCADA) system. The SCADA for the heat recovery system shall be integrated into the SCADA for the LFGTE facility, therefore the Contractor shall closely coordinate with the Contractor of the LFGTE facility for the design and installation of the required SCADA system. The SCADA shall provide control, monitoring, and metering capabilities for the heat recovery system.

The Contractor will include remote monitoring system alarms that notify operators when the heat recovery system is not performing properly or is off-line. The remote monitoring and alarm system shall also provide information to County for the maintenance and servicing of these respective systems.

The Contractor will include automation of all processes of the Project that can be practically automated on a commercially reasonable basis, and will design the Project to minimize operator intervention and supervision. The Project will operate without full-time employee supervision and shall include an alarm notification system.

15. Project Permits and Applications. It shall be the Contractor's responsibility to provide or prepare all Project Permits and Applications in Exhibit C.
16. Project Detailed Design. Contractor shall provide all detailed engineering and design services necessary to support the Project, to include:

16.1 Civil/Structural Engineering and Design Services.

16.2 Mechanical Engineering Design Services.

16.3 Electrical/Instrumentation Engineering and Design Services.

17. Designs will include the following utility interfaces:

17.1 Connections to the LFGTE project waste heat sources.

17.2 Drains to existing drain manhole.

17.3 Electric power, if needed, for the heat recovery system may be fed off the Electricity generated by the electric generation system before it reaches the Electric Delivery Point.

17.4 Telephone, data and high speed internet service to a local junction box at the Site to be provided by County.

17.5 SCADA.

- 17.6 Mechanical, electrical, plumbing systems of the existing maintenance building.
- 18. Contractor shall procure all equipment, infrastructure and supplies for the Project.
- 19. Construction, Start-Up, Testing, Commissioning, and Training
  - 19.1 Civil/Structural and Mechanical Construction and Installation
  - 19.2 Electrical/Instrumentation Construction and Installation
  - 19.3 Startup, Testing, and Commissioning. Contractor shall provide services to bring the Project into operational status and ready for performance testing. Commissioning services will include startup and checkout by qualified manufacturer's representatives under the supervision of Contractor personnel. Contractor personnel or representatives will actively observe the commissioning process, and that commissioning will be an integral part of training Owner personnel on the Project.
  - 19.4 Training. Contractor shall provide Project training for the designated County's personnel during the commissioning of the Project. County's personnel will be requested to witness critical commissioning activities and participate to the extent they wish in the start up of the Project. Additional training provided will include:
    - 19.4.1 Two four-hour sessions, conducted by Contractor for ARL operating personnel
    - 19.4.2 Training sessions as well as activities during Start-Up and Commissioning shall be recorded for the benefit of County's personnel.
    - 19.4.3 Training will include the provision of five (5) hard copies and two (2) electronic copies of the Project operating and maintenance manuals.
  - 19.5 The Scope of Work includes all items that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the Performance Guarantees and all warranties provided for under the Contract. As a result, Contractor hereby waives any and all claims for an increase in the Total Fixed Construction Price, if any, or an extension of the Milestones and overall Progress Schedule based, in whole or in part, upon an assertion that any certain license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is beyond the Scope of Work when such license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is indicated in the Contract or the Exhibits, or reasonably inferable therefrom or incidental thereto or required in accordance with the Contract.

## **EXHIBIT B**

### **LANDFILL , PROJECT SITE AND COLLECTION AND RECOVERY SYSTEM**

The entire construction and operation of the project would take place within the Alpha Ridge Landfill property boundaries which is owned by Howard County, Maryland. The Alpha Ridge Landfill property is approximately 550 acres in size and borders Maryland Route 99 on the north, Interstate Route 70 on the south, Howard County's Public Safety Training Center on the southwest and private residences on the west and east.

The maintenance building was constructed as part of the original design of the landfill. Approximately 14 years after its construction, the maintenance building underwent renovations including an addition to the south side of the building and interior modifications. Details regarding the original design and the modifications are provided in Attachments 1 and 2.

The Alpha Ridge Landfill (ARL) began accepting waste in 1980. The landfill gas (LFG) collection system and flare were installed in 1999 to maintain the integrity of the cap on the unlined cell. LFG is collected from two areas, the first is a 68-acre unlined cell and the second is a 40-acre operating lined cell. The unlined cell was capped in 1999 in accordance with COMAR 26.04.07.21. The top of the unlined cell is capped with a high-density polyethylene (HDPE) membrane that minimizes infiltration of precipitation into the landfill. The sideslopes of the unlined cell are capped with soil.

The lined cell is active and currently receives approximately 4,500 tons per year of primarily soil, bricks, concrete, and industrial waste.

The County operates and maintains the existing LFG collection and flaring system including all wells, piping, condensate traps, valves, blower system, electrical panels, control systems, and all connections and components. The well field comprised of 87 vertical extraction wells (74 in the unlined cell and 13 in the lined cell) is balanced monthly.

The site is an Emissions Guideline (EG) site, not a New Source Performance Standards (NSPS) site, and has a Title V permit.

#### **Supporting Drawings and Documents**

<b>ATTACHMENT</b>	<b>DESCRIPTION</b>
I	Sheets 11, 22, 23, 24, 25, 26, 29 and 32 of 32 by Harrington, Lacey and Associates, March 1979 are provided to show the structural, electrical, mechanical details of the original maintenance building
II	Sheets 1-15 of 15 by Acer Engineers and Consultants, June 1994 are provided to show the structural, electrical, mechanical details of the modifications to the maintenance building
III	Sheets 6, 8, and 22 of 25 by EA Engineering, June 1990 are provided to show the 4" D.I.P. recycle line that runs from the pump building shown on Sheet 8 of 25 to the leachate/recycle crossover vault shown on Sheet 6 of 25 east of the lined cell and approximately midway between subcells C and D
IV	Jenbacher J320 Technical Description
V	NEPA Documentation and Approval

## **EXHIBIT C**

### **PROJECT PERMITS AND APPLICATIONS**

Contractor will be responsible for identifying all applicable permits and approvals and preparing required applications. Contractor will provide copies of all applications in draft form to County for review and comment prior to submission to the permitting authority. Contractor will finalize the application and prepare the appropriate number of copies of each application for County's review, execution and submission to the appropriate authority. Contractor shall provide such reasonable assistance as is required by County when dealing with any other government body, agency or authority in all matters relating to the Project.

#### **1. County Approvals.**

- 1.1 Site Development Plan, Stormwater Management, Erosion and Sediment Control and Grading Permit.** Since the project involves the disturbance of more than 5,000 square feet, an erosion and sediment control plan and grading permit will need to be filed with the County after the design of the project is completed and prior to construction. Since this is a linear project and considered a temporary disturbance, the County does not require stormwater management or site development plan.

- 1.2 Noise Study.** Contractor shall determine if the manufacturer's standard noise suppression configuration (including silencer) will meet applicable legal requirements.

County noise regulations can be found under the Police Department (8.9) in the County Code. The equivalent state regulations from Maryland Department of the Environment are found in COMAR 26.02.03. Levels are in the range of 65 decibels (dBA) for daytime (7am-10pm) and 55 dBA for nighttime (10pm - 7am) by the time the sound reaches the receiving (i.e., residential) property lines.

- 1.3 Forest Conservation Plan.** Contractor will review the latest ARL Forest Conservation Plan to determine any forest conservation requirements associated with the Project.

#### **2. Maryland Department of the Environment (MDE) Approvals.**

- 2.1. Air Quality.** The geographic area where Alpha Ridge Landfill is located is non-attainment for ozone (moderate) and PM2.5.

The heaters do not combust fuel, so no emissions are generated, thus no emissions to the atmosphere. The Contractor shall be responsible for any required air quality permit to construct.

If any modification to the Part 70 (Title V) Operating Permit for Alpha Ridge Landfill is required due to this Project, then the work required for such minor or major permit modification shall be included within the Scope of Work for this Project.

- 2.2. **Solid Waste Program.** Contractor will prepare a report, including Project details and Project drawings, for County's review and submission to the MDE, Solid Waste Program for approval.
- 2.3. **Water Management Administration.** If the disturbance is more than one acre, Contractor will prepare a National Pollutant Discharge Elimination System (NPDES) application for Individual Permit to Discharge Stormwater Associated with Construction Activities for County's review and submission to MDE, Water Management Administration for approval.
3. **Other Permits.** Except for building, plumbing and electrical permits which are the responsibility of Contractor, Contractor will assist the County in the preparation of applications for any additional permits as required to execute the Project. Contractor will prepare the permit applications and supporting documents. Contractor will provide copies of all applications in draft form to County for review and comments prior to submission to the permitting authority.



**EXHIBIT D**

**PERFORMANCE TEST PROCEDURES**

**Contractor shall provide a performance test plan for review and approval by County that will demonstrate compliance with performance specifications. The test procedures will be ASTM or ASHRAE methods where available. At a minimum, the test plan will demonstrate the ability of the heat recovery system to deliver the Contractor's specified heating capacity in BTU/hr at the maintenance shop.**

**EXHIBIT E**

**PROGRESS SCHEDULE**

To be submitted by Contractor.

**EXHIBIT F**  
**SCHEDULE OF VALUES**

To be submitted by Contractor.

**EXHIBIT G**

**PERFORMANCE GUARANTEES**

Contractor guarantees that the Project:

- 1) shall maintain all manufacturer required engine specifications for the Jenbacher J320 including but not limited to the minimum return temperature for the engine, the minimum stack temperature specified, and maximum exhaust back pressure;
- 2) shall produce the Contractor's minimum specified heating capacity (in BTU/hr) required to achieve comfortable temperatures at the maintenance building;
- 3) air flow shall be balanced and checked;
- 4) shall be capable of evenly achieving maximum and minimum temperatures in all zones that are served by the heat recovery system;
- 5) pressure tests to ensure that there are no leaks in the pipelines; and
- 6) building tests.

**EXHIBIT H****FORM OF PERFORMANCE BOND****Principal****Business Address of Principal****Surety****Obligee****HOWARD COUNTY, MARYLAND**

a corporation of the State of .....  
 and authorized to do business in the State of  
 Maryland

**Penal Sum of Bond (express in words  
 and figures)**

**Date of Contract**

....., 20.....

**Date Bond Executed**

....., 20.....

**Description of Contract**


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**Contract Number:**


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KNOW ALL MEN BE THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where a surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liabilities is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with Howard County, Maryland, which Contract is described and dated as shown above. The contract and all items incorporated into the Contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the Contract or to the work to be performed thereunder or to the Plans, Specifications, General Provisions, Special

Provisions, or any of them, or to any other items incorporated into the Contract shall hereinafter be referred to as the "Contract," which is specifically incorporated herein by reference as if fully set forth herein, including but not limited to the Choice of Law and Forum provisions of the Contract.

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed and delivered to the County.

NOW, THEREFORE, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. The Principal shall well and truly perform the Contract, including all warranty or guarantee obligations, and shall discharge any and all liability for latent defects, for which the Surety shall also be liable;
2. The Principal and Surety shall comply with the terms and conditions of this Performance Bond;
3. If the Obligor notifies both the Contractor and the Surety at their addresses described in this Bond that the Obligor is considering declaring the Contractor in default of the Contractor's obligations under the Contract, then, the Surety, at the Obligor's request, shall arrange a conference with the Principal and the Obligor to discuss methods of performing the Contract. If the Obligor, Principal and the Surety agree, the Principal shall be allowed a reasonable time, as determined by the rights to declare the Principal in default under the contract and terminate the Principal's right to proceed or to avail itself of any other right or remedy under the Contract;
4. If the Obligor declares the Contractor in default and terminates the Principal's right to proceed prior to final acceptance, then the Surety shall:
  - a. Undertake to perform and complete the Contract itself through its agents or through independent contractors; or
  - b. Obtain bids or negotiated proposals from qualified contractors acceptable to the Obligor for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Obligor with a contractor selected with the Obligor's concurrence and acceptable to the Obligor to be secured with performance and payment bonds executed by a qualified Surety in a form acceptable to the Obligor, and pay to the Obligor the cost of completion of the contract in excess of the Balance of the Contract price; or
  - c. If the cost to complete the Contract is in excess of the Balance of the Contract price plus the Penal Sum of the Performance Bond, then either obtain bids or negotiated proposals from qualified contractors acceptable to the Obligor for a contract for performance and completion of the contract, arrange for a contract to be prepared for execution by the Obligor with the contractor selected with the Obligor's concurrence and acceptable to the Obligor, to be secured with performance and payment bonds executed by a qualified Surety in a form acceptable to the Obligor and pay to the Obligor the excess cost of completion up to Penal Sum of the Bond as the excess costs are incurred by the Obligor; or pay to the Obligor the Penal Sum of the Bond within thirty (30) days of the date when the Surety determines the cost to complete the Contract is in excess of the sum of the Penal Sum of the bond and the Balance of the Contract price.
5. If the Surety complies with the obligations contained in paragraph 4 of this Bond, then, the Surety's liability shall be limited to the Penal sum of its bond.

6. If the Surety contests the propriety of the default and termination of the Principal's right to proceed, the Surety shall, nevertheless, comply with the obligations contained in paragraph 4 of this Bond but, in that event, the Surety shall be entitled to exercise all of the Principal's remedies under the Contract, including but not limited to asserting any and all claims which he Principal may have.
7. The balance of the contract Price shall be the total amount payable by the Oblige to the Principal under the Contract after adjustments for any approved change orders, including allowance to the Principal of any amounts received or to be received by the Oblige in settlement of insurance or other claims for damage to which the Contractor is entitled, reduced by all payments properly made to and on behalf of the Principal under the Contract and less any deductions made by the Oblige under the Contract for any damages for which the Principal may be liable to the Oblige under the Contract.
8. If, after notice of default under the contract and termination of the Principal's right to proceed, the Surety does not comply with the obligations contained in paragraph 4 of this Bond, then the Oblige, within fifteen (15) days after notice to the Surety, may have the remaining Contract work completed and the Surety shall be liable for all completion costs and other costs and damages that the Oblige may incur as a result of the Surety's failure to comply with the terms of this Bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations under the Bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications. Any increase in the contract amount shall automatically result in a corresponding increase in the penal amount of the Bond, without notice to or consent from the Surety, such notice and consent being hereby waived. Decreases in the contract amount shall not, however, reduce the penal amount of the Bond unless specifically provided for in said change order.

The Performance Bond shall be governed by and construed in accordance with laws of the State of Maryland exclusive of its choice of law rules and any reference herein to the Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to the Performance Bond. It is specifically understood and agreed that this Bond shall be a sealed instrument for all purposes. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal of Surety name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the date of the Bond shown above.

<b>In Presence of:</b> <b>Witness</b> ..... as to	<b>Individual Principal</b> .....(SEAL)
<b>Presence of:</b> <b>Witness</b>  ..... as to ..... as to ..... as to	<b>Co-Partnership Principal</b> .....(SEAL) (Name of Co-Partnership)  <b>By:</b> .....(SEAL) .....(SEAL) .....(SEAL)
	<b>Corporate Principal</b> ..... (Name of Corporation)
<b>Attest:</b>  ..... <b>Corporate Secretary</b>	By:..... <b>AFFIX</b> President <b>CORPORATE</b> <b>SEAL</b>
	..... (Surety)
<b>Attest:</b> (SEAL)  ..... <b>Signature</b>	By:..... <b>AFFIX</b> ..... <b>CORPORATE</b> <b>SEAL</b> <b>Title:</b> .....
<b>Bonding Agent's Name:</b> .....	..... (Business Address of Surety)
<b>Agent's Address:</b> .....	
	Approved as to legal form and sufficiency this .....day of ....., 20..... .....



**EXHIBIT I****DRAFT AIA Document G702™ - 1992****Application and Certificate for Payment**

<b>TO OWNER:</b>		<b>PROJECT:</b> SAMPLE	<b>APPLICATION NO:</b> 001	<b>Distribution to:</b>
			<b>PERIOD TO:</b>	<b>OWNER:</b> <input checked="" type="checkbox"/>
			<b>CONTRACT FOR:</b> General Construction	<b>ARCHITECT:</b> <input type="checkbox"/>
			<b>CONTRACT DATE:</b>	<b>CONTRACTOR:</b> <input type="checkbox"/>
			<b>PROJECT NOS:</b> / 20-09-XXXX /	<b>FIELD:</b> <input type="checkbox"/>
				<b>OTHER:</b> <input type="checkbox"/>

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM ..... \$ 0.00
2. Net change by Change Orders ..... \$ 0.00
3. CONTRACT SUM TO DATE (Line 1 + 2) ..... \$ 0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) ..... \$ 0.00

**5. RETAINAGE:**

- a. 0 % of Completed Work  
(Column D + E on G703) \$ 0.00
- b. 0 % of Stored Material  
(Column F on G703) \$ 0.00

Total Retainage (Lines 5a + 5b or Total in Column I of G703) ..... \$ 0.00

6. TOTAL EARNED LESS RETAINAGE ..... \$ 0.00  
(Line 4 Less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT ..... \$ 0.00  
(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE ..... \$ 0.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE  
(Line 3 less Line 6) \$ 0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
<b>TOTALS</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
NET CHANGES by Change Order	\$	0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

**CONTRACTOR:**

By: \_\_\_\_\_

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Subscribed and sworn to before  
me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

**AMOUNT CERTIFIED** ..... \$ 0.00  
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

**ARCHITECT:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract

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**DRAFT** AIA® Document G703™ - 1992

## Continuation Sheet

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT,  
containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: SAMPLE

APPLICATION DATE:

**PERIOD TO:**

ARCHITECT'S PROJECT NO:

A	B	C	D		E	F	G	H	I
			FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD					
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE				MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
GRAND TOTAL									

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User Notes: (1296568149)

The following prerequisites must also accompany the written request for payment:

- (A) Consent of Surety specifying the material type and the Item(s) in which the material is to be used;
- (B) Validated invoices showing that payment for the material has been made by the Contractor;
- (C) Bills of lading showing delivery of the material; and
- (D) Inspection test reports, certifications and/or a written statement from the Inspector attesting to the inspection and approval of the material.
- (E) Contractor shall indicate its Federal Tax Identification or Social Security Number on the face of each invoice billed to the County.
- (F) Prime Contractor Invoicing Requirements Part 1 and Part II forms.

**EXHIBIT J****FORM OF PAYMENT BOND****Principal****Business Address of Principal****Surety****Obligee****HOWARD COUNTY, MARYLAND**

a corporation of the State of .....  
 and authorized to do business in the State of  
 Maryland

***Penal Sum of Bond (express in words  
 and figures)***

**Date of Contract**

....., 20.....

**Date Bond Executed**

....., 20.....

**Description of Contract**


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**Contract Number:**


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**KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business addresses as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of Claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves, out heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where a surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, out successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit is indicated, the limit of such liability shall be the full amount of the Penal Sum.**

**WHEREAS, Principal has entered into or will enter into a Contract with Howard County, Maryland, which Contract is described and dated as shown above, and incorporated herein be reference. The contract and all items incorporated into the modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the Contract shall hereinafter be referred to as the "Contract."**

**WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed and delivered to the Obligee.**

**NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all Claimants as hereinafter defined, for all sums justly due, labor and materials furnished, supplied, and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:**

- 1. A claimant is defined to be any and all of those persons supplying labor and materials in the prosecution of the work provided for in the Contract entitled to the protection provided by Sec. 17-101, et seq., State Finance and Procurement Article of the Annotated Code of Maryland ("Maryland Little Miller Act").**
- 2. The above named Principal and Surety hereby jointly and severally agree with the Obligee that every Claimant as herein defined, who has not been paid in full may, pursuant to and when in compliance with the provisions of the Maryland Little Miller Act, sue on this Bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.**

**The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.**

**This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland exclusive of its choice of laws rules and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.**

**IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Payment Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: The corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the date of this Bond shown above.**

**In Presence of:  
Witness**

**Individual Principal**

..... as to

.....(SEAL)

**In Presence of:  
Witness**

**Co-Partnership Principal**

.....(SEAL)  
(Name of Co-Partnership)

..... as to  
..... as to  
..... as to

**By:**.....(SEAL)  
.....(SEAL)  
.....(SEAL)

**Corporate Principal**

**Attest:**

.....  
(Name of Corporation)

.....  
**Corporate Secretary**

**By:**..... **AFFIX**  
..... **CORPORATE**  
**President** **SEAL**

**Attest:** (SEAL)  
.....  
**Signature**

**By:**..... **AFFIX**  
..... **CORPORATE**  
**SEAL**  
**Title:**.....

**Bonding Agent's Name:**.....

.....  
(Business Address of Surety)

**Agent's Address:**.....

**Approved as to legal form and sufficiency this**  
**.....day of ....., 20.....**

.....

**EXHIBIT K**

**REQUIREMENTS OF MECHANICAL COMPLETION**

Contractor shall perform systematic conformity checks required to verify the condition of equipment, the quality of the installation and the compliance of the facility improvements with the Scope of Work, the Specifications, the Project Requirements and the other terms and conditions of the Agreement.

Contractor shall demonstrate to the County that the installation of all necessary components and systems of the Project are electrically and mechanically sound.

The System Checkout Packages referred to in Section 12.2.1 of the Contract will be prepared for each system for the Project, including, but not limited to the following systems:

- Heat recovery system package
- Air control system (expansion tank, air separator, automatic air vent, pressure reducing valve for make-up water, and pressure relief valve)
- Hot water unit heaters
- Site utilities (lighting, pumps, alarms, etc.)
- Instrumentation (calibration and function)
- SCADA system
- Air flow
- Programmable thermostats

**EXHIBIT L**

**OPERATION AND MAINTENANCE MANUAL REQUIREMENTS**

Contractor shall provide the County copies of the Operation and Maintenance Manual in accordance with Section 3.23 of the Agreement. The Operation and Maintenance Manual shall be in English and shall include an index listing all of the documents that comprise the Operation and Maintenance Manual, which shall include (at a minimum) the following sections:

- Complete detailed Facility Description
- County Personnel Training Program
- Important Safety Information
- Authorized Contacts and 24-hour Emergency Contacts
- Notifications to County
- All required permits
- Detailed step-by-step start up / shutdown Procedures
- Remote Operations details and step-by-step procedures.
- Emergency Shutdown and Power Disconnect – Step-by-step procedures
- Supervisory Control And Data Acquisition (SCADA) Operations
- Support Services (detailed)
- Routine Maintenance Requirements complete with details, timetables, check lists, and procedures for the required maintenance
- Material safety data sheets (MSDS)
- Fluids List (type, quantity, purpose, recommended levels, etc...)
- Detailed Manufacturer's operation and maintenance information (as appendices and/or separate volumes – Provided that information reflects the details necessary to perform any/all recommended maintenance functions.)
- Facility As-built Drawings ( must be scale drawings and provided in both electronic and printable formats)
- Spare Parts List
- Other sections and information as requested by the County.



**EXHIBIT M**

**DETAILED PLANS**

The deliverable documents and drawings listed below (the “Detailed Plans”) form part of the Work and shall be delivered in accordance with Article 10 of the Agreement. The Detailed Plans for approval, which are marked with a (\*\*) below (the “Documents for Approval”) shall require approval of the County before design progresses in accordance with Section 10.1. The other Detailed Plans and other documents and drawings shall be provided as the Work proceeds.

**Engineering Documentation**

General & Process

- Process flow diagram (PFD)
- Piping and instrumentation diagrams (P&ID's)
- Facility site plan \*\*
- Equipment layout plan \*\*

Mechanical

- Gas/Liquid routing plan \*\*
- Piping details
- Piping support details
- Building modifications\*\*
- Instrumentation installation details
- Heat exchanger installation plans and details
- Miscellaneous equipment installation plans and details

Electrical

- Electrical site plan
- Electrical underground conduit routing plan \*\*
- Electrical plant grounding plan
- Electrical plant lightning protection plan
- Electrical single line and three line diagram and relay diagram
- Electrical 480V single line diagram
- Electrical control power schematics
- Electrical ground details and Panel schedules
- Lighting schedules \*\*
- Conduit and cable schedules
- Coordination study \*\*
- Protective Relay Settings
- Building modifications

Controls (SCADA)

- SCADA PLC panel drawings
- Loop diagrams
- Operational description
- I/O list

Civil and Structural

- Grading plan \*\*
- Equipment foundation drawings and details
- Erosion and sedimentation plans and details
- Anchor bolt plans and details
- Building modifications
- Noise abatement drawings and details\*\*

**EXHIBIT N**  
**COUNTY RULES**

Contractor and its Subcontractors and their respective employees, agents and representatives shall comply with the following rules (the “County Rules”) at all times regarding activities on the Project Site (including restrictions to ingress and egress) and shall cooperate with and coordinate their activities with the County and any person performing work or undertaking activities at the Project Sites, including, without limitation, contractors or subcontractors performing work for or on behalf of the County. In addition:

- 1) Contractor shall be responsible for maintaining a list of all Contractor personnel and Subcontractor personnel that are on-site at any time and upon request shall provide the list to the County. On-site personnel shall wear either a company identification or shirt/jacket with company logo.;
- 2) Contractor shall maintain the Project Site free of waste material and rubbish and shall be responsible for all Contractor and Subcontractor material, equipment and tools.
- 3) Contractor shall have its personnel and its Subcontractor personnel review the safety program manual. The review shall include the proper procedures for lock out, tag out and confined space entry.
- 4) Contractor shall only access designated areas that are not part of the Project Site with the prior approval of the County.
- 5) The Contractor and its Subcontractors shall minimize any interference with the Landfills or any County activities on the Project Site.
- 6) The Contractor shall have physical access to the site for permitting, design, and construction between the hours of 7:00 am and 5:00 pm five days a week (Monday through Friday). Additional hours of work or holiday work require written approval of the County at least 48 hours prior to the work starting.
- 7) The Contractor will not be charged tipping fees at the Landfill for disposal of Project related waste. All Project related waste shall be weighed at the Landfill’s scalehouse prior to disposal.
- 8) The use of explosives on the Project will not be permitted.

**EXHIBIT O**

**CONTRACTOR PROVIDED INSURANCE**

**1. INSURANCE REQUIREMENTS**

Prior to the execution of this Agreement, the Contractor or their subcontractor shall provide and maintain at their own cost and expense, during the life of the Agreement, insurance against claims for injuries to person(s) and/or damages to property which may arise from, or in connection with, the performance of Work hereunder by the Contractor, its agents, representatives, employees, and/or Subcontractors, as outlined below. The insurance must be kept in full force and effect during the term of this Agreement. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the Contractor and/or their Subcontractors shall provide a copy of the insurance policies and endorsements. Contractor's insurance shall be primary. In the case of subcontracted work, the Contractor shall require the Subcontractor or anyone directly or indirectly employed by any of them to procure the same coverage and name the County as Additional Insured.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE**

A minimum limit of liability of *ten million dollars (\$10,000,000)*, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and operations
- Independent Contractors
- Products and Completed Operations during and for two years following  
Completion of the work
- Personal Injury
- Broad Form Property Damage
- Explosion, Collapse, and Underground Hazards (XCU) - required if such exposure  
exists due to the nature of the construction site

There shall be no exclusions pertaining to collapse of or damage to any building or structure, damage to underground property, machinery, or injury or damage arising out of blasting or explosions.

**3. PROFESSIONAL LIABILITY (Covering Engineering/Design)**

Professional liability insurance covering errors and omissions and negligent acts committed during the period of contractual relationship with the County with a limit of liability of at least *ten million dollars (\$10,000,000)* per claim and aggregate and a maximum deductible of *twenty-five thousand dollars (\$25,000)*. Contractor agrees to provide a three-year discovery period under this policy.

**4. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

A minimum limit of liability of *two million dollars (\$2,000,000)*, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles

- non-owned automobiles

**5. CONTRACTOR'S POLLUTION LIABILITY INSURANCE / ENVIRONMENTAL IMPAIRMENT LIABILITY**

A minimum limit of liability of *ten million dollars (\$10,000,000)*, combined single limit for bodily injury and property damage coverage per occurrence. Such insurance shall cover any gradual, sudden and/or accidental release of toxic or hazardous waste or other hazardous substance requiring monitoring, clean-up or other corrective actions under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). Contractor agrees to provide a three-year discovery period under this policy.

If any pollution events, including hazardous material, are encountered during the performance of this Agreement, the Contractor or its subcontractor shall immediately notify the County.

**6. BUILDER'S RISK - ALL RISK PROPERTY INSURANCE**

"All-Risk" property insurance upon the Work and materials used in developing the Project with a limit of coverage at least equal to the full replacement value of the Project. Such property insurance shall be written on a replacement cost basis, subject to standard exclusions, property limitations and conditions. Such insurance shall include the County, and all Subcontractors, and Sub-Subcontractors as Additional Named Insureds, in the Work and the Project and shall insure against fire, extended coverage and all risk perils (including resultant loss or damage from or as a consequence of faulty materials, workmanship or design).

Contractor expressly waives all right of recovery against County for damage to its tools and equipment and shall assure that the Builder's Risk insurer agrees to waive of subrogation against County.

**7. WORKER'S COMPENSATION**

Meeting all statutory requirements of the State of Maryland Law as well as any similar coverage required for this work by applicable Federal or "Other States" State Law. and with the following minimum Employers' Liability limits:

- *Bodily Injury by Accident - \$1,000,000 each accident*
- *Body Injury by Disease - \$1,000,000 policy limits*
- *Bodily Injury by Disease - \$1,000,000 each employee*

The Contractor, their subcontractors and their workers' compensation insurers shall waive subrogation against the County for any workers' compensation claims filed by their employees.

**8. MECHANICAL BREAKDOWN/ BOILER & MACHINERY INSURANCE**

If mechanical equipment related to the Work is not included under the Builders' Risk policy coverage, the contractor shall purchase and maintain from the point of delivery of equipment onto the site until the project is accepted by the County, a **Mechanical Breakdown/ Boiler and Machinery Insurance** policy at a limit of not less than the purchase price of such equipment, covering all such equipment not covered by the Builders' Risk Insurance described above. County shall be named as Additional Insured under the policy.

**9. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall be wholly the responsibility of the Contractor and/or its Subcontractors.

#### **10. OTHER INSURANCE PROVISIONS**

The insurance policies required in the Agreement are to contain, or be endorsed to contain, the following provisions:

a. General Liability Policies

- (1) Policy Cancellation  
Thirty (30) days written notice to the County of cancellation or material change of any of the policies is required. There will be an exception for non-payment of premium, which is ten days' notice of cancellation.
- (2) The policy(ies) will automatically include and cover all phases of work, equipment persons, etc., which are normally covered while performing Work under this Agreement, whether specifically written therein or not.
- (3) All General Liability policies shall name "Howard County, MD" as Additional Insured and such Additional Insured status shall be primary over any other insurance held by the County. Additional Insured status shall apply to ongoing work, completed work and general supervision of work.
- (4) The insurance company(ies) providing insurance coverage as required herein are prohibited from pleading governmental function in the absence of any specific written authority by the County.
- (5) Aggregate Limits for all policies shall apply per project.

#### **11. ACCEPTABILITY OF INSURERS**

Unless otherwise approved by the County, insurance is to be placed with insurers with Best's rating of no less than A:VIII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VIII and must be licensed and approved to do business in the State of Maryland.

If at any time the foregoing policies shall be or become unsatisfactory to the Authority, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, Contractor shall, upon notice to that effect from the County, promptly obtain a new policy and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

#### **12. VERIFICATION OF COVERAGE**

The Contractor and/or its Subcontractors shall furnish the County with verification of insurance and endorsements required by this Agreement. The certificates, policies and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with this Agreement. The County reserves the right to require complete, certified copies of all required insurance policies at any time, such evidence of insurance shall refer to the Project names and Agreement number.

The contractor shall not commence work under the contract until evidence of all required coverage is received by the County. The contractor shall continue to provide the County with evidence of policy renewals until the completion of the contract and subsequent years as required for claims made policies. Further, the contractor shall not reduce, cancel or change any of the required coverages without 30 days notice of such change to the County. Failure to maintain required insurance shall be viewed as a material breach of the contract by the contractor.

**13. SUBCONTRACTORS**

The contractor shall assure that all subcontractors performing services in accordance with this Agreement carry coverage comparable to that required of the Contractor, either individually or as an additional insured on the policies of the Contractor. Exceptions may be made only with the approval of the County. Contractor shall indemnify the County for any uninsured losses relating to the contractual services involving subcontractors, including workers' compensation claims.

The Contractor shall include all Subcontractors as Additional Insureds under its policies or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

**EXHIBIT P**

**ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM**

**SUBRECIPIENT OR SUBCONTRACTOR FLOWDOWN REQUIREMENTS**

Subawardees who receive federal funds under an assistance agreement shall comply with the flow down requirements for subawardees specified in the “Special Provisions Relating to Work Funded under American Recovery and Reinvestment Act of 2009” which apply to this award. Additionally, as required by 10 CFR 600.2(b), 10 CFR 600.236, and 10 CFR 600.237, any new, continuation, or renewal award and any subsequent subaward shall comply with any applicable Federal statute, Federal rule, Office of Management and Budget (OMB) Circular and Government-wide guidance in effect as of the date of such award. These requirements include, but are not limited to the following:

- a. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>.
- b. In addition to 10 CFR 600, Appendix A, Generally Applicable Requirements, the National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at [http://management.energy.gov/business\\_doe/1374.htm](http://management.energy.gov/business_doe/1374.htm) apply.
- c. 2 CFR 215, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110).”
- d. OMB Circular A-102, “Grants and Cooperative Agreements with State and Local Governments” Common Rules.
- e. OMB Circular A-21, “Cost Principles for Educational Institutions,” OMB Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” OMB Circular A-122, “Cost Principles for Non-Profit Organizations,” or FAR at 48 CFR Part 31, “Contract Cost Principles and Procedures,” for Profit Organizations, as applicable.
- f. OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”
- g. Subawardee Application/proposal as approved by DOE.

The following pages set forth subgrant flowdown provisions suggested for use in issuing subawards.

**Recipients are also advised that all contracts must include the provisions in 10 CFR 600.236, “Procurement”, Section (i) “Contract Provisions”, numbers 1-13.**



**SUBGRANT FLOWDOWN PROVISIONS FOR EECBG FINANCIAL ASSISTANCE AWARDS****SPECIAL TERMS AND CONDITIONS****Table of Contents**

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## **1. RESOLUTION OF CONFLICTING CONDITIONS**

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

## **2. CEILING ON ADMINISTRATIVE COSTS**

### **STATES**

- a. State Recipients may not use more than 10 percent of amounts provided under the program for administrative expenses (EISA Sec 545 (c)(4)). These costs should be captured and summarized for each activity under the Projected Costs Within Budget: Administration.
- b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

### **LOCAL GOVERNMENT (Cities & Counties) and INDIAN TRIBES**

Local government and Indian Tribe Recipients may not use more than 10 percent of amounts provided under this program, or \$75,000, whichever is greater (EISA Sec 545 (b)(3)(A)), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA. These costs should be captured and summarized for each activity under the Projected Costs Within Budget: Administration.

- a. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

## **3. LIMITATIONS ON USE OF FUNDS**

- a. By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.
- b. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or \$250,000, whichever is greater (EISA Sec 545 (b)(3)(B)), for the establishment of revolving loan funds.
- c. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or \$250,000, whichever is greater (EISA Sec 545 (b)(3)(C)), for subgrants to nongovernmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government or Indian tribe.

## **4. REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFIT COSTS**

- a. The Recipient is expected to manage their final negotiated project budgets, including their indirect costs and fringe benefit costs. DOE will not amend an award solely to provide additional funds for changes in the indirect

and/or fringe benefit costs or for changes in rates used for calculating these costs. DOE recognizes that the inability to obtain full reimbursement for indirect or fringe benefit costs means the Recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the Recipient's cost share.

- b. If actual allowable [indirect and/or fringe benefit] costs are less than those budgeted and funded under the award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

## **5. USE OF PROGRAM INCOME**

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and used to further eligible project objectives.

## **6. STATEMENT OF FEDERAL STEWARDSHIP**

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

## **7. SITE VISITS**

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

## **8. REPORTING REQUIREMENTS**

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.
- b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

## **9. PUBLICATIONS**

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

*Acknowledgment:* “This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)].”

*Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

## **10. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

You must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

## **11. LOBBYING RESTRICTIONS**

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

## **12. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS**

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project.

If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

## **13. HISTORIC PRESERVATION**

Prior to the expenditure of Project funds to alter any historic structure or site, the Recipient or subrecipient shall ensure that it is compliant with Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE’s 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. If applicable, the Recipient or subrecipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO) to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link:

<http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>. Section 110(k) of the NHPA applies to DOE funded activities.

If applicable, the Recipient or subrecipient certifies that it will retain sufficient documentation, to demonstrate that the Recipient or subrecipient has received required approval(s) from the SHPO or THPO for the Project. Recipients or subrecipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106. The Recipient or subrecipient shall deem compliance with Section 106 of the NHPA complete only after it has received this documentation. The Recipient or subrecipient shall make this documentation available to DOE on DOE's request (for example, during a post-award audit).

#### **14. WASTE STREAM**

The Recipient assures that it will create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe the Recipient's or subrecipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. The Recipient shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. The Recipient shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit).

#### **15. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS**

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

#### **16. SUBGRANTS AND LOANS**

- a. The Recipient hereby warrants that it will ensure that all activities by sub-grantee(s) and loan recipients to accomplish the approved Project Description or Statement of Project Objectives are eligible activities under 42 U.S.C. 171534(1)-(13). State recipients hereby warrant that they will ensure that all activities by sub-grantee(s) and loan recipients pursuant to 42 U.S.C. 17155(c)(1)(A) to accomplish the approved Project Description or Statement of Project objects are eligible activities under 42 U.S.C. 171534(3)-(13).
- b. Upon the Recipient's selection of the sub-grantee(s) and loan recipients, the Recipient shall notify (i.e. approval not required) the DOE Contracting Officer with the following information for each, regardless of dollar amount:
  - Name of Sub-Grantee
  - DUNS Number
  - Award Amount
  - Statement of work including applicable activities

State recipients shall notify the DOE Contracting Officer with the above information within 180 days of the award date in Block 27 of the Assistance Agreement Cover Page.

- c. In addition to the information in paragraph b. above, for each sub-grant and loan that has an estimated

cost greater than \$2,000,000, the recipient must submit for approval by the Contracting Officer, a SF424A Budget Information – Nonconstruction Programs, and PMC 123.1 Cost Reasonableness Determination for Financial Assistance (available at <http://www.eere-pmc.energy.gov/forms.aspx>).

## 17. JUSTIFICATION OF BUDGET COSTS

- a. In the original application, the recipient did not provide sufficient information to justify the approval or release of funds for the proposed activities. In order to receive reimbursement for the costs associated with the activities listed in the approved Statement of Project Objectives (SOPO), a justification for all proposed costs must be submitted to the DOE Contracting Officer.

- b. The Recipient must provide justification for the following costs:

### Personnel Costs:

The Recipient must submit cost justification for the following personnel costs: for approval by the Contracting Officer.

### Fringe Benefit Costs:

The Recipient must submit a fringe benefit rate proposal/agreement for approval by the Contracting Officer.

### Travel Costs:

The Recipient must submit cost justification for the following travel costs: for approval by the Contracting Officer.

### Equipment Costs:

The Recipient must submit vendor quotes for equipment with an individual item cost of \$50,000 or more, for approval by the Contracting Officer.

### Supplies Costs:

The Recipient must submit cost justification for the following supplies costs: for approval by the Contracting Officer.

### Contractual Costs:

1. The recipient shall provide the following information for each individual or company that will receive EECBG funding, regardless of dollar amount:

- Name
- DUNS Number
- Award Amount
- Statement of work including applicable activities
- NEPA documentation, as applicable

2. In addition to the information in paragraph 1. above, for each individual or company that has an estimated cost greater than \$2,000,000, the Recipient must submit a separate SF424A Budget Information – Nonconstruction Programs, and Budget Justification. The DOE Contracting Officer may require additional information concerning these individuals or companies prior to providing written approval.

### Other Direct Costs:

The Recipient must submit cost justification for the following other direct costs: for approval by the Contracting Officer.

### Indirect Costs:

The Recipient must submit an indirect rate proposal/agreement for approval by the Contracting Officer.

- c. Upon written notification and/or approval by the Contracting Officer, the Recipient may then receive payment for the activities listed in the approved SOPO for allowable costs incurred in accordance with the payment provisions contained in the Special Terms and Conditions of this agreement. These written notifications and/or approvals will be incorporated into the award by formal modification at a future date.

## **18. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS**

The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the Recipient under this award pertaining to the programs identified herein. By accepting this award, the Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Recipient also agrees, by its acceptance of this award, to require its sub-recipients to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the sub-recipient.

## **19. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)**

### **Preamble**

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep

separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

#### Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

#### Special Provisions

##### **A. Flow Down Requirement**

Recipients must include these special terms and conditions in any subaward.

##### **B. Segregation of Costs**

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

##### **C. Prohibition on Use of Funds**

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any



casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

**D. Access to Records**

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

**E. Publication**

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

**Notice of Restriction on Disclosure and Use of Data**

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

**F. Protecting State and Local Government and Contractor Whistleblowers.**

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

**Prohibition on Reprisals:** An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the

authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

## **G. Reserved**

## **H. False Claims Act**

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

## **I. Information in Support of Recovery Act Reporting**

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

#### **J. Availability of Funds**

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

#### **K. Additional Funding Distribution and Assurance of Appropriate Use of Funds**

Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

#### **L. Certifications**

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

### **20. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT**

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any

information that is pre-filled is corrected or updated as needed.

## **21. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

\*Special Note: Definitization of the Provisions entitled, “REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009” and “REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009” will be done upon definition and review of final activities.

## **22. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the Recipient determines at any time that any construction, alteration, or repair activity on a public building or public works will be performed during the course of the project, the Recipient shall notify the Contracting Officer prior to commencing such work and the following provisions shall apply.

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

To Be Determined

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act* . (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data*. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

### Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

\*Include all delivery costs to the construction site.

## **23. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

(a) *Definitions.* As used in this award term and condition—

*Designated country* — (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

*Designated country iron, steel, and/or manufactured goods* — (1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

*Domestic iron, steel, and/or manufactured good* — (1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

*Foreign iron, steel, and/or manufactured good* means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

*Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*Public building* and *public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

*Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

- (i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and
- (ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

To Be Determined

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

- (i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;
- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
- (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

### Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

\*Include all delivery costs to the construction site.

## 24. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

## 25. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS



(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

## **26. DAVIS-BACON ACT AND CONTRACT WORKHOURS AND SAFETY STANDARD ACT**

**Definitions:** For purposes of this provision, “Davis Bacon Act and Contract Work Hours and Safety Standards Act,” the following definitions are applicable:

(1) “Award” means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.

(2) “Contractor” means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients’ or Subrecipients’ contractors, subcontractors, and lower-tier subcontractors. “Contractor” does not mean a unit of State or local government where construction is performed by its own employees.”

(3) “Contract” means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. “Contract” does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) “Contracting Officer” means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) “Recipient” means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out

the terms and conditions of the program and Award.

(6) “Subaward” means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of “Award” above.

(7) “Subrecipient” means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

**(a) Davis Bacon Act**

**(1) Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after

written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on

the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other

clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**(b) Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department

of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**(c) Recipient Responsibilities for Davis Bacon Act**

(1) On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:

- (i) Obtain, maintain, and monitor all Davis Bacon Act (DBA) certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
- (ii) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
- (iii) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (ii) above;
- (iv) Address any Subrecipient and any Contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
- (v) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
- (vi) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
- (vii) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and



(viii) Provide copies of all records upon request by DOE or DOL in a timely manner.

**(d) Rates of Wages**

The prevailing wage rates determined by the Secretary of Labor can be found at <http://www.wdol.gov/>.

**EXHIBIT Q**

**CLOSEOUT DOCUMENTS (CERTIFICATE OF SUBSTANTIAL COMPLETION, GENERAL  
RELEASE, AND CONTRACTOR'S AFFIDAVIT)**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

Date :

**CAPITAL PROJECT :** \_\_\_\_\_

**CAPITAL PROJECT #** \_\_\_\_\_

**CONTRACT #** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

**OWNER :** \_\_\_\_\_

Howard County's Bureau of Environmental Services certifies that the work performed under this contract has been inspected by authorized representatives of the owner, contractor and ENGINEER, and that the project is substantially complete.

A tentative list of items to be completed or corrected is appended hereto and presented as Attachment No.1. This list may not be complete and failure to include any items on it does not relieve the CONTRACTOR of the responsibility to complete all the WORK in accordance with the CONTRACT DOCUMENTS. These items shall be completed within \_\_\_\_\_ days of receipt of the CERTIFICATE OF SUBSTANTIAL COMPLETION.

The date of SUBSTANTIAL COMPLETION is the date upon which all guarantees and warranties begin, except as affected by Attachment No. 1.

Signed and dated this \_\_\_\_ day of \_\_\_\_\_ 2010.

By: \_\_\_\_\_

Howard County  
Bureau of Environmental Services

The CONTRACTOR accepts the above CERTIFICATE OF SUBSTANTIAL COMPLETION and agrees to complete and correct the items and Attachment No. 1 within the time indicated.

**ACCEPTANCE OF CERTIFICATE**

Receipt of this CERTIFICATE OF SUBSTANTIAL COMPLETION is hereby acknowledged  
this \_\_\_\_ day of \_\_\_\_\_, 2010.

By: \_\_\_\_\_ [ name] \_\_\_\_\_

Title: \_\_\_\_\_

(CONTRACTOR) \_\_\_\_\_

Attachment:

**GENERAL RELEASE**

**PROJECT #** \_\_\_\_\_

**PURCHASE ORDER #** \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS

In consideration of the premise and the sum of \$\_\_\_\_ (\$\_\_\_\_), lawful money of the United States of America, \$\_\_\_\_ of which has already been paid by Howard County, Maryland ("Owner") and \$\_\_\_\_ of which is to be paid by the Owner under the above mentioned contract. The undersigned Contractor does and by the receipt of said sum shall for itself, its successors and assigns remise, release and forever discharge the Owner, its officers, agents and employees of and from all liabilities, obligations and claims whatsoever in law and in equity under or arising out of said contract.

IN WITNESS WHEREOF this Release has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

***[NAME OF CORPORATION]***

\_\_\_\_\_

BY: \_\_\_\_\_

Witness \_\_\_\_\_

Contractor \_\_\_\_\_

Witness \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

**CERTIFICATION OF CORPORATION**

I, \_\_\_\_\_, certify that I am of the Corporation named as the Contractor in the foregoing Release; that \_\_\_\_\_ who signs said Release on behalf of the Contractor was the \_\_\_\_\_ of said Corporation, that the said Release was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its Corporate powers.

Date \_\_\_\_\_

Subscribed and sworn to before me by the said \_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_.

My Commission expires: \_\_\_\_\_.

**CONTRACTOR'S AFFIDAVIT**

\_\_\_\_, being duly sworn according to law does hereby depose and say that he/she is the President of \_\_\_\_\_, and is authorized to make this affidavit on the aforementioned organization's behalf; and that, to the best of his/her knowledge, information and belief, all persons, partnerships, and corporations who have done work or furnished materials under Contract # \_\_\_\_\_, or in or about the work contracted for, and who have given written notice to the Owner of claims against the Contractor on account thereof, have been fully paid or secured.

*[Name of Company]* \_\_\_\_\_

BY: *[President]* \_\_\_\_\_

Date: \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NOTARY PUBLIC

My commission expires: \_\_\_\_\_